

The Hilo Tribune.

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HILO dog-fanciers are talking of organizing a kennel club, having for its object the improving of the character, or, more properly, quality, of the canines of the vicinity. There are several well-bred dogs in Hilo, and a hole lot of curs, mangy and otherwise. Happily the police department is materially reducing the numbers of the last mentioned class through the enforcement of the dog tax law. An organization of this kind, that would register dogs worthy of such an honor, and that could arouse interest in the pure breeding of these animals, would prove of interest to its members and would be a public benefactor.

If streets do not make a city, at least there can be no city without streets. The city of Hilo can boast of many as well-kept and beautiful streets as any of its size anywhere, still there are a number of unopened sections and extensions, that are needed now, to say nothing of the future, for street purposes. The convenience of the individual whose property is boxed up; that of the public, desiring to get about; and the appearance of things in general, all demand that these streets be opened. The way to get these things done is to go ahead and do them. There is nothing in the way of accomplishing the desired results more than the following of the necessary and prescribed legal course. There are no unusual obstacles in the way. The full improvements of all these streets is not immediately necessary. Among the most important of street improvements awaiting action is that of the widening and subsequent putting in a finished condition of King street. The location of this street with reference to the business part of the city, the court house and other public buildings, puts it in the front rank of importance among those needing attention.

MR. A. L. LOUISSEON, the well-known coffee grower of Hamakua, has been in Hilo during the past week. Mr. Louisseon takes exception to the suggestion made by THE TRIBUNE some time ago, that, the climate and soil of this island being similar, apparently, to those of Costa Rica where the finest flavored coffee in the world is produced, it might be found some day that this island would make coffee growing equally successful with that country. He says that in his opinion there is only one solution for the coffee question in this country, and that is the tariff. "You may say," he says, "that my views are very radical on that question; there is only one solution for the problem of successfully producing coffee on this island, and that is a tariff on coffee." Mr. Louisseon has fully informed himself, and is beyond doubt the best posted man hereabout on this subject; his opinion is entitled to all respect, and THE TRIBUNE admits the undoubted correctness of his conclusion. In this, as in most industries new to a locality, more or less experimentation has to be made to attain success, but unquestionably a tariff on coffee is necessary to make coffee production profitable in this country.

Band For Celebration.

While in the city during the week, Rev. W. H. Fenton-Smith was in consultation with the Hilo band management with reference to their going to Kohala on June 10 to furnish music for the celebration being arranged for the occasion of the opening of the Kohala ditch. Mr. Fenton-Smith was acting at the request of Mr. Sam Parker, who has the arrangements for the celebration in charge.

It is understood that the band will leave, if the arrangements for its going are completed, on a special steamer, on Sunday, June 10, returning the following Tuesday, the celebration being on Monday, June 11.

DECISION BY JUDGE PARSONS.

Right of Trial by Jury.—Territorial Laws in Conflict With Constitution.

In the Circuit Court of the Fourth Circuit, Territory of Hawaii, At Chambers.

In the Matter of Fujii Kaichi, Petitioner. Habeas Corpus.

DECISION.

The facts in this case are not disputed. On the 18th day of April, 1906, the petitioner was arraigned in the District Court of South Hilo upon a charge of larceny in the second degree, to which he entered a plea of not guilty and thereupon demanded a trial by jury. The demand was refused and, over the objection of petitioner, the magistrate proceeded to hear the case and to render judgment thereon. On April, 19th, 1906, the magistrate found the defendant guilty as charged, and thereupon sentenced him to pay a fine of \$100.00 and costs. The petitioner refusing to pay said fine and costs was taken into custody by respondent and was by him imprisoned in the Hilo jail under a mittimus issued by said magistrate upon said judgment.

Petitioner is brought before this court upon a writ of habeas corpus dated April 19th, 1906. In his petition the latter claims to be unlawfully restrained of his liberty, alleging that the District Magistrate was without jurisdiction to try, convict and sentence him upon said charge after his demand for a jury trial.

Petitioner claims that upon the charge of larceny in the second degree he was entitled to trial by jury under the Sixth Amendment of the Constitution of the United States. Article III of the Constitution contains, among others, the following provision:

"The trial of all crimes, except in cases of impeachment, shall be by jury."

The portion of Amendment VI, above referred to, provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed."

Section 5 of the Organic Act provides, among other things:

"That the Constitution, and, except as herein otherwise provided, all the laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States."

Section 1664, Revised Laws of this Territory, provides:

"District Magistrates shall have jurisdiction of, and their criminal jurisdiction is hereby limited to, criminal offenses punishable by fine, or by imprisonment not exceeding one year whether with or without hard labor, or with or without fine. Provided, however, that they shall not have jurisdiction over any offense for which accused cannot be held to answer unless on a presentment or indictment of a grand jury; and, provided further, that in any case cognizable by a district magistrate as aforesaid in which the accused shall have the right to a trial by jury in the first instance, the district magistrate, upon demand by the accused for such trial by jury, shall not exercise jurisdiction over such case, but shall examine and discharge or commit for trial the accused as provided by law; but if in any such case the accused shall not demand a trial by jury in the first instance, the district magistrate may exercise jurisdiction over the same subject to the right of appeal as provided by law."

[The judge quoted from the opinion of Mr. Justice Harlan in the case of Callan vs. Wilson, 127 U. S. 540, who quotes Mr. Justice Story, in "Story on the Constitution," p. 1791; from Mr. Justice Blatchford in re Dana, 7 Benedict, 14; from Mr. Justice White, in Rasmussen vs. the United States, 197 U. S. 516, and concludes his decision as follows:]

In ex-parte Higashi, decided by the Supreme Court of this Territory, April 6th, 1906, the Territory appealed from an order of the circuit judge in a habeas corpus pro-

ceeding, discharging the petitioner who was imprisoned in Honolulu jail under a sentence of thirty days imprisonment, imposed by the district magistrate of Honolulu, for the offense of "Aiding and assisting in maintaining a lottery contrary to Section 3173, R. L."

The circuit judge's reason for discharging the petitioner and many of the questions considered upon appeal in the Supreme Court are not raised in this case and need not here be discussed.

In the Higashi case the petitioner failed to demand a jury trial in the magistrate's court and thereby waived the right to be tried by a jury in the first instance. The Supreme Court expressed the opinion, however, in reversing the decree of the circuit judge, that had the petitioner demanded a jury trial he would have been entitled to the same under the Sixth Amendment of the Constitution.

Said Mr. Justice Hartwell, in giving the opinion of the court:

"The offense of gambling, whether prohibited by municipal ordinance or territorial statute, is not a crime which from its nature requires the publicity of a jury trial, but when it may be punished, as in the present case, by imprisonment for a period as long as one year, the offense becomes sufficiently grave, by reason of the penalty, to require a jury trial, if demanded by the defendant." After reciting the facts and the decision in the Rasmussen case, Justice Hartwell continues:

"The decision is conclusive in the present case in requiring us to hold that under the sixth amendment the petitioner was entitled to 'enjoy the right to a speedy and public trial by an impartial jury.'"

Grand larceny and petit larceny are common law offenses. From the ninth year of Henry the First down to the time of Blackstone, theft of property above the value of twelve pence was punishable by hanging.

4 Cooley's Blackstone, 3rd Ed. 237.

Larceny in the second degree, or the theft of property of less value than fifty dollars (the offense for which the petitioner was tried in the district court) is punishable under the laws of this Territory by imprisonment not more than one year or by fine not exceeding one thousand dollars.

Section 2963 Revised Laws.

In view of the nature of the offense and the punishment provided therefor as set forth respectively in the above two last paragraphs, the decision in Callan vs. Wilson, Rasmussen vs. United States and Ex-Parte Higashi, above quoted, are held to be decisive of all the issues involved in the present case.

Applying Mr. Justice Hartwell's words in re Higashi to the present case: "When a jury is demanded in a case like this * * * the magistrate commits the defendant for trial by jury in the circuit court if in his opinion the evidence adduced shows probable cause to believe that a jury would convict." I find that the petitioner was entitled to a trial by jury upon his demand for same, that after his demand the magistrate was without jurisdiction to try and convict him upon said charge of larceny in the second degree, and that petitioner's imprisonment by respondent under a mittimus issued upon said conviction is illegal. It is ordered that the prisoner be discharged.

CHARLES F. PARSONS, Judge.

Hilo, Hawaii, May 16th, 1906.

Decoration Day Observance.

Captain Fetter is moving in the matter of having Decoration Day, Wednesday, May 30, fittingly observed. On account of the absence of a Grand Army post here, and the fact that the veterans are few, in fact there being only two at present, Company D naturally assumes the duty of arranging for the observance of the day. A committee, consisting of Lieut. Beers, Sergeant Moorehead, and Corporal Caceres, has been appointed from the company to procure flowers and supervise decorating. Capt. Fetter is arranging for church services, which will probably be held in either the Hall or Foreign Church. The company follows the rules laid down in the tactics governing Memorial Day ceremonies.

Rock Beer by the bottle, or on draught, at the Union Saloon.

A LETTER FROM CALIFORNIA.

Vivid Description of Ruin Wrought By Earthquake.

The following interesting letter was received from Mr. Deacon, a brother of Mrs. C. C. Kennedy. Mr. Deacon resides in the Santa Cruz mountains at an elevation of about 3000 feet above the sea:

Wrights, May 1st.

Dear Folks:

We have had something like a shake up: just such a one as we have read about and thought a fairy tale; but this was real. The house has suffered no damage further than having the chimneys broken off even with the roof and slung over the ridge of the roof on the other side of the house. None of the houses on the ranch were badly damaged but nearly all the houses here were thrown down or so badly damaged as to render them uninhabitable. The water in my tank was 8 ft. from the top and the water was thrown out of it and the foundation basin was only half full of water but that was thrown out up to the porch and strange to say neither tank nor foundation basin was cracked or injured in the least. Of course everything in the house was thrown about, nothing left standing except the piano and that was skating all about the room. Two-thirds of our crockery and preserves were destroyed, but strange to say there was not one single pane of glass or mirror broken, but people were thrown out of their beds. I was awake lying on my bed smoking and I both saw and felt the whole performance. I saw the elm trees in front of the house switch the ground so I thought my room was about as safe as any where, so I stayed there and dressed, and after I had moved things so that I could get out and E. could get in, I came out and saw the darndest mix-up that a person could conceive. Lamps were thrown across the room and two of them landed in a chair and each went plum through the chair bottom. There are no cracks on my place, but on the Skyland side the earth is cracked in a fearful manner; some of the fissures are from two to three feet wide, one edge of the gap standing two or three feet higher than the other. My wood shed was moved off its base just three feet but is not injured in any way. All I have to do is shove it back again as it stands nearly level. I have been putting up chimneys. I got the one in the kitchen up the third day after the quake so we could cook and yesterday I got the one in the dining-room so I could have a fire there, as the nights are cool, but it will take me at least three days to finish the other one. Fortunately we had a barrel of lime on the place so I could make mortar and I have developed into a very fair mason. You see we can get nothing here as the rail-road is put out of business and it will be two weeks before we can get supplies.

The tunnel is condemned and cannot be repaired, so Wrights will be the terminus. We get our mails now from Los Gatos and it was four days before we got news from San Francisco. There was as severe a shake in San Francisco as we had here and the water mains were broken. All or nearly all the brick buildings were shaken down, and there being no water the fire had full swing and made a clean sweep. There is not even a charred stick left in the whole burned district, everything ashes.

The fire made a clean sweep from the water front to 20th street on our side of town. Our old house is standing but the other side of 20th street is burned clean, but it crossed 20th the next street above and took Lehman's house (formerly of Hakalau) and followed it up to Geurero street, making a clean sweep. On the other side of town everything is swept clean to Van Ness avenue, and right in the center it crossed and took out about five blocks; Spreckels' house was in one of the blocks. The city is so completely changed that it is a hard matter to tell just where you are as there is nothing to go by except a few prominent land marks, and unless a person is pretty well acquainted and pretty good on locality could very easily get confused. J. and J. and the kids are here, and as we have a large hen factory I guess we won't starve before supplies come along.

It is all bosh about the lower part of the city sinking; it did not settle at all, but the made ground in the Mission between 17th and 19th streets, where the old Willows creek was in the early days, has sunk and twisted in all kinds of shapes.

We are all well and when things get straightened out will be all right I hope. No one seems to be despondent; all are cheerful and look on the bright side of things. Your loving brother,
W. D.

But the other four are being discussed.

Robertson's strength in the local party has had something of a boom during recent days, and there is a lot of strong support for him as a candidate among the business community. Robertson is national committeeman and chairman of the Territorial committee and has all along been understood to be a probable candidate this time.

Harris was chairman of the finance committee of the House last time and made a fine legislative record. He has since been prominent in party affairs and is a strong candidate.

George W. Smith was brought forward in the matter by his record at Washington, on the commission which went there to work for the refunding bill, also by his public record in county affairs.

Reports from other islands tell of much Robertson strength. It is said that Maui will come to the convention for him almost solidly. Judge Kepoikai, who was reported to have signed a Kubio resolution, denied having done so and recently declared himself a supporter of the Republican chairman for delegate.—Star.

Furnished Rooms for Rent.

Large, nicely furnished rooms opening on two verandas for rent very reasonable. MRS. WRIGHT.

Kubio's Rivals in the Party. There are four white candidates for the delegateship being prominently discussed as rivals of Prince Cupid for the Republican nomination. They are A. G. M. Robertson, Representative W. W. Harris, Senator Lincoln L. McCandless and George W. Smith who, in the capacity of chairman of the Board of Supervisors, has been given the title of "first mayor" of Honolulu. It is considered likely that one of them will be in nomination before the convention, with the chances in favor of Robertson. So far, none of the four are making any active campaign, Kubio being the only aspirant who has begun a fight.

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